UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MCNEILL,	) No. CV-99-332-PHX-RCB
	)
Plaintiff,	)
vs.	)
TOWN OF PARADISE VALLEY	)
	)

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ROBERT C. BROOMFIELD
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: (Pro Se)	By: Michael McNeill 9536 W. Ross Avenue Peoria, AZ
For the Defendant:	By: Charles M. Callahan HOLLOWAY, ODEGARD, SWEENEY & EVANS 3101 N. Central Ave., Ste. 1200 Phoenix, AZ 85012
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August 13, 2001

THE CLERK: All rise. Court is now in session.

You may be seated.

Civil 99-332-PHX, McNeill v. Town of Paradise Valley, on for defendant's motion for summary judgment re: Fourth Amendment claim.

Counsel, please state your name for the record.

MR. MCNEILL: Michael McNeill, pro se.

MR. CALLAHAN: Charles Callahan on behalf of the defendant, Town of Paradise Valley, Your Honor.

THE COURT: Thank you. Is there anything you wish to add to what you've written?

MR. CALLAHAN: Just very briefly, Your Honor. I think the affidavit —

THE COURT: If you can come on up here if you want.

MR. CALLAHAN: Thank you, Your Honor. The affidavits that we've now submitted, the only remaining issue as you framed it in your order which is the foundation for Officer Coppela's certification. That's the only remaining issue. You found that there is no viable fourth amendment claim if the certification is valid. The only concern was over the foundation.

The affidavits now establish that the photo radar unit was working properly on August 19th. It took photo graphs of speeding vehicles. One of the photographs which has been produced on — with a date of August 19th, 1997, is a late model F150 Ford pickup truck. It's never been disputed that that pickup truck is owned by the plaintiff or that that vehicle was speeding on that date and time at that place.

Officer Coppela received a printout based upon motor vehicle records of all registered owners of the vehicles that were caught to be speeding. He issued a certification that he had reasonable grounds to believe that all of those listed had committed a speeding offense and the traffic citations were issued.

Based upon your Court's prior orders, I think that established the foundation for the certification and eliminates the Fourth Amendment claim.

THE COURT: Thank you. Mr. McNeill.

MR. MCNEILL: Your Honor, you were very kind and gave me an extension to get my brief in and counsel was given a certain amount of time pursuant to local Rule 1.10LI believe it is, 15 days to get his brief in.

Counsel was served, hand-delivered, on the 19th of July and I — what I did is I had Airborne express the documents down here so my daughter could deliver them so I would get an answer in time to reply to what I suspected was going to come in his reply brief or at least make objections to it. And that would mean that that document would have been due to me on the 3rd of August which would have given me time to type up some objections. The document was dated on the 6th. I didn't get it till the 8th and there was zero time left over in my life to make objections at that point in time. And I would like permission to do them right.

THE COURT: I think you, if I understand, you want to make objections to his reply brief in the motion for summary judgment? There isn't any such —

MR. MCNEILL: He has brought up new information in there that I wish to dispute. What we have is the same thing that we had last time here, Your Honor. We don't have the correct documents in the record. And it's material, I believe.

THE COURT: And what is it that you believe is incorrect? You can tell me about it now and let's then see what —

MR. MCNEILL: Yes. Oh, sure, certainly. He referred to a certain printout that he submitted to you. That is not the printout that was given to me which is a part of the prosecutor's file which I have the original of which

was produced to me. That printout which I would move that the entire prosecutor's file go into evidence and be made a part of the record if I can. We'll get to that.

That printout shows 21 names on it. There is my name. There is Avis Rent-a-Car a couple times, Hertz Rent-a-Car a couple times, Brophy Technical School, there's eight corporations or companies on that printout, which there is a certification, an alleged certification, attached to which uses the term defendant. There was never anything prior to the original on this motion for summary judgment where anybody came up and said that they were certifying the vehicles were speeding. Because certifying that a vehicle is speeding is like certifying the moon is full. Under 1561, he must certify that he believes that the person named in the complaint committed the offense. A police officer cannot believe that a corporation committed the offense and that is why they do not certify the tickets.

This is — I will get into the certification proper business later on. The point is if we're going to have a printout in the record, let's have the printout in the record that was produced in the file, not this what you have in front of you.

There's another important point in there, Judge, not that I think it — we can get to that. I think I went around that quite frankly. But it used a time on there when Officer Coppela took these. Mr. Coppela filed an affidavit that he was certifying a police or a printout, not the documents, not the complaints themselves. He was certifying that he got this printout. That's all that says. Okay. And on that printout it gives the time. Counsel put an affidavit into the record that shows they take this film and they send it out and then it comes back. Before it came back, it shows that Mr. Coppela filed this certification, never having seen a complaint.

Now that is one of the reasons I would like to put

into evidence at least the total printout and I would prefer instead of like last time where I had to correct an attorney and you ordered that the file be brought to you and I don't know if it was ever put into the record of if you just used it for your own use. I think there's a difference there. I don't understand what it is.

THE COURT: Well, do you have something now that you wish to place in the record?

MR. MCNEILL: Yes, I do. I would like to put the en tire — I'm sorry, because I didn't get this until like five days after then I should have, is what the problem is. This is my original prosecutor's file that was produced to me. And I would like to put the entire — I mean if we're going to put documents into the record and we're going to get court records, which in fact are still sanitized, this is a file that I got. It's got this Vicki or Victoria Paris is the one that made a statement to you before, which is not accurate. This is the entire file. So why don't — he has referred to this, this document right here, as I will show you in here. It's not one page. It's three pages. And let me just read this to you here. It gives a date and time on here starting out with September 10th at 11:00 and it runs down to — wait a minute. I'm sorry. August 19th at 11:57 and this goes down to August 19th at 2:27. Now in this and we have certification, we have Budget Rent-a-Car, we have Brophy College Prepratory School, we have Avis Rent-a-Car, we have Hertz Corporation, we have Avis again.

THE COURT: Excuse me. I thought it was the other document that you wished to offer into evidence.

MR. MCNEILL: Well —

THE COURT: Not that one.

MR. MCNEILL: This particular document is in here. This —

THE COURT: I'm sorry. Then I misunderstood.

MR. MCNEILL: This is page 66 through 69 of this

prosecutor's file which I'm just saying I would just as soon put the entire file in.

The point is — oh then we got Bill Luke Dodge here you see. Bill Luke Dodge, I made the point and I don't want to be facetious but in the fact of the matter is, pigs don't fly and coronations don't drive vehicles. And there is no police officer who can certify a belief that a corporation can drive a vehicle. It is my position that if a police officer certifies that, that police officer committed perjury and I think this applies that if he certifies he believes that the registered owner is a driver, he has also committed perjury. I'll get off that.

There was a remark made by counsel in this brief regarding I'm bringing up things that you have already ruled on and I would only point out to the Court that I have asked for reconsideration on those things because of course it is my position that the legislature of the State of Arizona puts forth a public policy of this state in the statutes. They enact statutes and that becomes the public policy of this state and it is my position that the Town of Paradise Valley cannot come forth and trump the Arizona legislature under any conditions. And the judges cannot allow other judges or anyone else or they themselves cannot trump the Arizona legislature. The Arizona legislature said this is how we want our tickets drawn up.

I'll cover one other point. I would like to — I would move to put this into evidence and to have it made a part of the record, Judge.

THE COURT: Okay. I'll — do you have any objections?

MR. CALLAHAN: Well, I don't know, Your Honor. The listing of all — the reason I only put a portion of it in and redacted it is because I don't know the need to have in a public record all the people who may have committed speeding violations, a listing of all those people. I think the important point and the only slightly relevant point is that

Mr. McNeill's name is on the printout along with other people.

THE COURT: Well, he's holding up a stack of pa

pers it looks to me like it's 25 or 30 pages thick. I don't know how tick it is. Is — are you asserting that the names of these other people are through all these various pages are only in that three-page document that he also held up?

MR. CALLAHAN: I believe they're only in the three-page document which is contained within.

THE COURT: So then your concern is with the three-page document, not the larger portion of it? Is that correct or incorrect?

MR. CALLAHAN: That's correct, Your Honor.

THE COURT: Is there any reason then to the extent it may be necessary that for these — or what he proposed to file or give to me be considered and filed under seal at least as to the three-page document?

MR. CALLAHAN: That's fine, Your Honor.

THE COURT: You have a problem with that, Mr. McNeill?

MR. MCNAILL: The only problem that — I'll leave that up to your discretion, Judge, but I would point out that out of 21 people who were ticketed on this day, of the nine that we know about for sure, nine of them did not speed in the Town of Paradise Valley.

There's still another 12 that we haven't looked at.

But if just one and a half in the four basically was someone who was given a ticket that was the driver of the car, the —

THE COURT: When you say they were not speeding, that's from your argument that they were corporate entities?

MR. MCNEILL: Yes.

THE COURT: I see. All right.

MR. MCNEILL: In other words, it'd be very easily to have 50 percent of the people that were ticketed that day not knowingly, not be the drivers of the car when they were issued the tickets. Now I have given you in my brief information from the Town of Paradise Valley which tells these companies what to do if they are ticketed. They are using the companies as to support the police powers of Paradise Valley in running down offenders.

And they're issuing them tickets knowing that they cannot be guilty. And they say right on their documents, when you call them up and you listen to them on the phone, they say we will prosecute you if you don't tell us who the driver is. Now there's something wrong with this picture. The reason that is the only objections, I don't think that these people would care that got these photo radar pictures — what this does is benefit the defendants. I don't believe there's a single person on here that I will call them up and ask them if they care if it's their name is in a public record as having gotten a photo radar ticket. What this does is cover up if we take this and hide it or whatever you do, you now, seal it. What we're doing is covering up for a police officer who said and I use — and I want to read this. Just one time.

"I certify upon reasonable grounds that I believe each of the defendants complained on this date" — okay? I ask the Court to take judicial notice of certain facts in my brief regard the fact that only real people, homo sapiens, people like you and I, can operate a motor vehicle and that the term defendant in the Statute 5161 or the term person means a real person like you or me. And would the Court tell me for the record whether it will judicially notice those facts?

THE COURT: I'll take — I'm going to rule on everything that's pending before me —

MR. MCNEILL: At that time?

THE COURT: — and I will address everything in the order.

MR. MCNEILL: Okay. It's my — my point is, Judge, that if you are a defendant, you are a real person. And certifying that this guy believes that coronations can drive vehicles is perjury. That's my point.

Okay. One other thing, I'll get out of your hair here. None of this — the testimony in the affidavits that he has submitted to you has changed. It went from he filled out this certificate on August 19th, that's the first thing he said. Now it's on August 19th or thereabout, on or about August 19th. See, it's changed. Both affidavits state essentially that he is certifying that vehicles are speeding. That does not comply with 1561. He must believe that the person named did it. He has changed this because this says, this certification says the defendant, Judge. It doesn't say the vehicles were speeding. He says — it says the person named. Okay.

All of this is irrelevant except for the fact we have police officers committing perjury and that's — and we have lawyers that are giving that information to you as the Judge. And there's something wrong with that, but in my cite of State v. Johnson, that I cited in my brief, seeing as to how he has brought this stuff up, I'd like to read this to you.

This is State v. Johnson, 184 Ariz. 521, 911 P. 2d 527, the Court of Appeals, August 30, 1994, "reconsideration denied, review denied," February 21, 1996. This is the law in the State of Arizona. And I read from paragraph eight, but I would incorporate the entire text of State v, Johnson into my arguments. No one has ever authorized a police officer to use a facsimile signature on the ticket. But here's what this court says. This has to do with motor vehicle department records.

> "It is true that a computer-generated facsimile signature is presumed to be valid certification absent

contrary evidence citing Irving 165 Ariz. 225. It is also proven that some indica of the requisite quote human involvement unquote must be apparent from the face of the document or for that foregoing reason, a computer generated facsimile signature standing alone will fail."

It states on here that it must appear on the face of the document and the face of the document is the complaint and the complaint is a photo radar ticket and nobody certifies them because they know they can all be charged with perjury under these laws. That's what's going on here. It's nothing but racketeering, pure and simple, one end to the other, corrupt public officials that he's standing up for and I leave that in your hands, sir.

THE COURT: Thank you. Anything?

MR. CALLAHAN: Very briefly, You Honor, I think I understand the argument regarding the printout list now but the fact is that it's irrelevant whether citations are being issued to corporations or not. The fact is it's undisputed that Mr. McNeill is not a corporation and if Mr. McNeill owned the truck that was caught speeding and he was is sued a ticket. I mean that's undisputed. So it's largely irrelevant as to who else is listed in the printout.

As far as it must be believed that the person driving was the speeder, this Court has already ruled that the presumption created by the town code that the registered owners are the drivers is constitutionally permissible.

But beyond that, the argument fails and the last thing I would just like to address, Your Honor, is kind of a housekeeping matter. As you know I filed a motion to strike the cross motion for summary judgment that he filed in response to this and I don't know what this Court's practice is as far as whether you want me to go ahead and respond to the cross motion for summary judgment before the motion to strike is ruled upon or wait for a ruling upon

the motion to strike? That's —

THE COURT: I'm not inclined to rule on anything that's pending before me, so there's nothing you have to do at this stage. Mr. McNeill, if you hand the document that you had — now is that your only copy?

MR. MCNEILL: No, I have a copy. This is the original, though.

THE COURT: You can either hand in the original or a copy, whichever you choose and I'll consider that in connection with the pending motions, yes.

Okay, Thank you. The matter's under advisement.

MR. CALLAHAN: Your Honor, could I just make a note as to the Bates numbers on that document he handed you so I can know for myself what is actually being filed.

THE COURT: You can look at it right after I leave and all you want to quickly just retain it and give it to me after you've looked at it.

MR. MCNEILL: Your Honor, one more question. This was the date we were supposed to have the pre-trial meeting. Is all this going to be changed and getting out of Court or something depending on what —

THE COURT: Right, either the motion gets granted, the case is over, or the motion gets denied in which event we have to have another hearing to set the —
have a pre-trial conference and set a trial date. And I'll deal with that in the order.

MR. MCNEILL: Thank you very much, sir.

THE COURT: Thank you.

THE CLERK: All rise. The Court stands adjourned.
(Proceedings Concluded as 12:31 p.m.)

CERTIFICATION

I (we) certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Dated: August 30, 2001 /s/Dianna Campbell